

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Performance Measurements and Standards for</b>	)	<b>CC Docket No. 01-318</b>
<b>Unbundled Network Elements and</b>	)	
<b>Interconnection</b>	)	

**REPLY COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY**

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## **SUMMARY**

The initial comments filed in this NPRM reinforce the point made in CBT's comments that the cost of imposing new mandatory regulations on small and mid-sized ILECs to monitor their performance far outweighs any benefit that may be gained from such regulations.

Without providing any evidence of problems with the service provided by the small and mid-sized ILECs, the CLECs concluded that mandatory federal measurements, standards and penalties are necessary for all ILECs or, at a minimum, all Tier 1 ILECs. In addition, the CLECs claimed that the small and mid-sized ILECs will not be unduly burdened if they are required to implement systems to monitor their performance according to a set of national measurements and standards.

The small and mid-sized ILECs explained that the cost of implementing such systems would be substantial because they do not currently have sophisticated tracking and monitoring systems in place. CBT elaborates on the types of changes that will be necessary if it is required to separately track and monitor CLEC wholesale orders.

Several parties recognized that "one size fits all" national performance standards cannot possibly take into account the differences between the large ILECs and the small and mid-sized ILECs, nor can they address the different competitive and regulatory environments among the states. As a result, small and mid-sized ILECs should be exempt from any national plan and negotiations should continue to determine on a case-by-case basis the need for measurements, standards and reporting. State regulators, who are in the best position to identify the issues that are unique to the particular situation, would oversee the process.

If national standards are adopted, CBT agrees that they should also apply to CLECs operating in the markets in which the standards apply.

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Cincinnati Bell Telephone Company (“CBT”) submits these reply comments in response to comments filed on January 22, 2002 on the Notice of Proposed Rulemaking (“NPRM”) in the above captioned proceeding.<sup>1</sup>

**I. INTRODUCTION**

Over 40 parties filed initial comments in response to the Commission’s proposal related to the development of national measurements and standards for evaluating incumbent local exchange carrier (“ILEC”) performance in provisioning wholesale facilities and services to competitors. The parties were divided over the best course of action for the Commission. The competitive local exchange carriers (“CLECs”) supported mandatory federal measurements, standards and penalties that would apply in addition to any measures already in place in the states. The state commissions’ primary concern was that any federal measurements and standards not preempt state efforts to enforce the section 251 requirements of the Act. The Regional Bell Operating Companies (“RBOCs”) were somewhat supportive of limited national

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<sup>1</sup> *Performance Measurements and Standards for Unbundled Network Elements and Interconnection*, CC Docket No., 01-318; *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147; *Petition of Association for Local Telecommunications Services for Declaratory Ruling*, CC Docket No. 98-147, 96-98, 98-

measurements if they preempt the detailed state measures; however they questioned the Commission's authority to enforce any federally mandated measures that might be implemented. Finally, the small and mid-sized ILECs were concerned that national measurements and standards would not reflect their circumstances and would be unduly burdensome.

It appears that the impetus behind the CLECs' arguments in support of national standards and automatic penalties is the desire to layer additional regulations and costs on ILECs, regardless of whether such regulations are warranted. These CLECs would have the Commission ignore the deregulatory goal of the 1996 Act.<sup>2</sup> The comments of the state commissions and the ILECs, however, recognize that such an approach is neither procompetitive nor deregulatory. These parties support a reasoned approach under which the Commission would not impose duplicative regulations where the state commissions and the industry have already assessed whether measurements and standards are necessary to monitor compliance with the interconnection and unbundling obligations established by the 1996 Act. In short, the states and the ILECs realize that implementing regulations solely for the sake of regulating is inappropriate and not in the public interest.

The Commission should not fulfill its duties by disadvantaging any party, but rather by ensuring that all carriers have an equal opportunity to compete. In doing so, the Commission must examine whether a problem exists before crafting a solution. In the current proceeding, this approach requires a refined analysis of all types of carriers and the circumstances surrounding them. To apply a single national solution to all ILECs would be comparable to a doctor prescribing the same medication and dosage to every patient without assessing the individual

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141, Notice of Proposed Rulemaking, FCC 01-331, (rel. Nov. 19, 2001). Initial comments filed January 22, 2002.

<sup>2</sup> AT&T at p. 38.

patient. Just as the indiscriminate use of medication can have adverse consequences, the indiscriminate application of regulations can have unintended and adverse impacts.

## **II. THERE IS NO EVIDENCE OF PROBLEMS WITH THE SERVICE PROVIDED BY THE SMALL AND MID-SIZED ILECS**

The comments filed on January 22<sup>nd</sup> provide no evidence of any problems with the service provided to CLECs by the small and mid-sized ILECs. The CLECs' case in support of unbundled network element ("UNE") performance measurements and standards is based solely upon evidence of alleged poor service quality and discrimination by RBOCs. Throughout the CLECs' comments there is not a single reference to a problem with any small or mid-sized ILEC. Instead, almost as an afterthought, the CLECs recommend that any performance measurements, standards, and penalties should apply to carriers other than the RBOCs. CBT urges the Commission to look beyond the CLECs' unsubstantiated assertions and unwarranted conclusions regarding the small and mid-sized ILECs. A more detailed analysis by the Commission will show that new measurements, standards and enforcement provisions are not warranted for the small and mid-sized ILECs.

## **III. NATIONAL MEASUREMENTS AND STANDARDS WILL IMPOSE SIGNIFICANT BURDENS ON SMALL AND MID-SIZED ILECS**

The small and mid-sized ILECs will incur significant costs if they are required to implement systems to monitor their performance according to a set of national measurements and standards. The claims by some parties that ILECs will not be burdened if they are required to implement monitoring systems show a lack of understanding, or perhaps total disregard, of the systems employed by small and mid-size ILECs.<sup>3</sup> As the small and mid-sized ILECs indicated

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<sup>3</sup> AT&T at p. 39, XO at p. 12, BellSouth at pp. 74-75.

in their comments, they do not have sophisticated tracking and monitoring systems in place.<sup>4</sup> Moreover, most do not even have separate systems for processing CLEC orders. As both Frontier/Citizens and CBT indicated in their comments, CLEC wholesale orders are handled by the exact same systems as their own retail orders.<sup>5</sup> CBT, for example, would have to modify nearly all of its ordering, provisioning, maintenance and repair systems in order to separately track CLEC orders throughout each step of the process. Moreover, additional expenses would be incurred to institute the monitoring systems necessary to measure performance according to whatever measurements that may be adopted by the Commission. As the comments of the RBOCs indicated, developing these systems is not a small undertaking. Furthermore, there are ongoing costs incurred to collect, process and report the data. BellSouth indicates that it took over a year to develop its performance measurement system and that currently over 200 full-time personnel are dedicated exclusively to its measurement and analysis program.<sup>6</sup> SBC employs over 435 full-time personnel to handle its measurement and reporting requirements<sup>7</sup> while Verizon reports that it employs 150 people to meet its reporting obligations.<sup>8</sup>

CBT is not suggesting that a small or mid-sized company would require 400 people or even 200 people to develop the systems and comply with the ongoing monitoring and reporting requirements proposed in the NPRM. However, it would undoubtedly entail the commitment of

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<sup>4</sup> Frontier/Citizens at p. 2, ITTA at p. 7. Also see Covad at pp. 44-51 which describes the complex systems that the RBOCs have established to comply with state measurement plans, yet does not cite any comparable systems in use by small or mid-sized ILECs.

<sup>5</sup> Frontier/Citizens at p. 4, CBT at p. 6.

<sup>6</sup> BellSouth at pp. 67-68.

<sup>7</sup> SBC at p. 7.

<sup>8</sup> Verizon at p. 69.

substantial resources for system modifications and for personnel.<sup>9</sup> Furthermore, the number of measures adopted and the level of disaggregation would impact the cost. As Verizon observed, with disaggregation, the twelve measures proposed in the NPRM could ultimately result in over 100 reporting requirements.<sup>10</sup> And, as Verizon noted, the cost of implementing a measurement is roughly the same no matter what is being measured.<sup>11</sup>

The detailed statistical formulas proposed for determining whether an ILEC is providing CLECs service that is comparable to its own further demonstrate the difficulties and costs a small or mid-sized ILEC would face. CBT is not able to offer comments on the merits or the applicability of the statistical formulas proposed by various parties since it does not employ a statistician. In order to actually institute these measures, CBT would most likely have to hire a consultant to assist in developing the measures and then employ a full-time statistician to handle the ongoing analysis of the data.

A small or mid-sized ILEC that does not have elaborate systems in place, nor the means of separately tracking CLEC orders, let alone measurement, analysis and reporting systems, will be forced to invest considerable time, effort and resources in order to measure and report its performance to the Commission. There is no justification for imposing such costs on the small and mid-sized ILECs, particularly when there is no evidence that they are not complying with the statutory requirement that they provide CLECs with interconnection and unbundled elements on a nondiscriminatory basis. However, if the Commission decides to subject the small and mid-sized carriers to any such measuring and reporting requirements, these ILECs should be allowed

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<sup>9</sup> Because the smaller carriers do not benefit from economies of scale to the extent of the large RBOCs, it is not possible to simply assume that the cost for a small or mid-sized carrier will be proportionately less than an RBOC's cost.

<sup>10</sup> Verizon at p. 38.

<sup>11</sup> *Id.* at p. 12.

to recover both their nonrecurring implementation costs and their ongoing monitoring and reporting costs.

#### **IV. MEASUREMENTS AND STANDARDS FOR SMALL AND MID-SIZED ILECS SHOULD BE DEVELOPED THROUGH NEGOTIATION**

As SBC indicated, “a ‘one size fits all’ national performance standard could not possibly take into account all the myriad differences in incumbent LEC networks and systems, nor could it account for differences in regulatory environments among the various states.”<sup>12</sup> This statement is particularly relevant for the small and mid-sized ILECs. The only appropriate standard is parity between an ILEC’s own service and the service it provides to the CLECs. Requiring conformance to a national standard or benchmark has the potential to force an ILEC to provide superior quality interconnection or access to unbundled elements, which as SBC indicated, the Eighth Circuit Court has already held the Commission cannot mandate.<sup>13</sup> Beyond the obvious size differences of the RBOCs’ networks and systems compared to the small and mid-sized ILECs, the latter ILECs’ systems, such as OSS, often are not as complex and sophisticated as are those of the RBOCs. Even among the small and mid-sized carriers there may be wide variability in the technology and systems employed. Thus, to require small and mid-sized ILECs to conform to standards that would most likely be developed based on experience between the RBOCs and CLECs could not possibly result in standards and benchmarks that reflect the small and mid-sized ILECs’ networks and systems. This problem was recognized by several parties, including the Virginia State Corporation Commission Staff which concluded that “[i]t is doubtful

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<sup>12</sup> SBC at p. 43. Also see, Virginia State Corporation Commission Staff at p. 2.

<sup>13</sup> SBC at pp. 32-33.



that a set of federal performance requirements could be established to meet the needs of all states or even all CLECs and ILECs.”<sup>14</sup>

The more appropriate course of action is to exempt the small and mid-sized ILECs from any national plan that the Commission may develop in this proceeding. Instead of national metrics, negotiations (and, where necessary, arbitration) between the ILEC and the CLEC should continue to determine on a case-by-case basis the need for measurements, standards and reporting.<sup>15</sup> This negotiation process will facilitate the development of measures that are appropriate for the network and systems of both the ILEC and the CLEC. Furthermore, because a CLEC’s needs may vary depending on how it plans to enter a market, the CLEC presumably will negotiate for only the information that it needs to assess the ILEC’s performance relevant to the unbundled elements being requested in that particular market.<sup>16</sup> This approach should help to minimize the situations where ILECs incur substantial costs to develop systems that are never used by the CLECs.<sup>17</sup>

By leaving the determination of appropriate measurements and standards for small and mid-sized ILECs to the negotiation of interconnection agreements, the oversight of the process appropriately falls to the state regulators. If the negotiating parties cannot agree on metrics and standards, the state commission will arbitrate the matter. Moreover, because the state commissions have the responsibility of enforcing interconnection agreements, any

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<sup>14</sup> Virginia State Corporation Commission Staff at p. 2. Also see TDS METROCOM, Inc., USLINK, Inc., and Madison River Communications at p. 6; Sprint at pp. 9, 20-21, Public Utilities Commission of Ohio at p. 10.

<sup>15</sup> CBT is not suggesting that performance measurements and standards developed by state commissions should be preempted. The negotiation/arbitration process would be used in those instances where state commissions have not otherwise adopted measurements and standards for small and mid-sized ILECs.

<sup>16</sup> Virginia State Corporation Commission Staff at p. 2.

<sup>17</sup> Frontier/Citizens at p. 4, CBT at p. 5.

noncompliance by the ILEC with the agreed upon metrics and standards will be taken up with the state commission. CBT concurs with the Public Utilities Commission of the State of Colorado that the “state commissions are in the best position to identify issues and to tailor remedial action to the particular situations that arise in their respective jurisdictions.”<sup>18</sup>

**V. IF NATIONAL STANDARDS ARE ADOPTED THEY SHOULD APPLY TO CLECS**

Several parties suggested that any standards the Commission adopts pursuant to this proceeding should apply to CLECs as well as ILECs.<sup>19</sup> Although CBT does not believe that national metrics are appropriate for all carriers, CBT does believe that if national standards are adopted they should also apply to CLECs operating within the markets in which the standards apply. Thus, for example, if standards are adopted for the RBOCs, but not small and mid-sized ILECs, the national standards would apply to CLECs only in the markets where they are competing against the RBOCs. However, if national standards are adopted for all ILECs, CLECs should be subject to those same standards in all areas in which they offer service.

The CLECs’ comments suggest that only ILECs have an incentive to provide poor service quality to other carriers. However, CBT has encountered several CLECs that are uncooperative and often times unresponsive when the CLEC’s customers want to switch to CBT’s or another CLEC’s service. Perhaps the most critical area where CLEC standards would be appropriate is in order processing. As SBC explained, when an end user customer decides to transfer service from one carrier to another, the new carrier is dependent upon a timely response via a Firm Order Confirmation (“FOC”) from the outgoing LEC in order to efficiently transfer

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<sup>18</sup> Public Utilities Commission of the State of Colorado at p. 6.

<sup>19</sup> SBC at pp. 29-30, Verizon at pp. 17-21.

service.<sup>20</sup> CBT often encounters significant delays from some CLECs when it wins back a customer. For example, in one recent case, CBT sent a Local Service Request (“LSR”) to a CLEC on December 19, 2001 and still has not received a response. In another case, the carrier refused to disconnect a customer from its switch despite sending CBT the agreed to paperwork.

Poor service quality and discriminatory behavior are not attributes reserved for ILECs. A CLEC fighting to gain market share may be reluctant to relinquish customers that it has worked hard to win initially. Therefore, it is appropriate for any standards that the Commission adopts to apply to both ILECs and CLECs within a particular market. Rules that apply equally to all providers are essential to promoting a fair competitive environment.

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<sup>20</sup> SBC at p. 30.

## **VI. CONCLUSION**

The comments that were filed in this proceeding provided no evidence of a problem with the small and mid-sized ILECs' performance in provisioning wholesale facilities and services to competitors. However, the comments did demonstrate that these ILECs would bear a substantial burden to implement the systems required to measure, analyze and report on the proposed performance measurements. Therefore, the Commission should refrain from imposing costly new requirements on the small and mid-sized ILECs. Instead, measurements and standards for these carriers should be left to the negotiation process between the specific ILEC and CLEC.

Respectfully submitted,

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February 13, 2002

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of Cincinnati Bell Telephone Company's Reply Comments has been delivered by first class United States Mail, postage prepaid, or by hand delivery on February 13, 2002 to the persons on the list attached.

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